

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY**

Plaintiff

V.

**FREEHOLD MANAGEMENT,
INC. AND RETAIL PLAZAS, INC.**

Defendants

V.

**FREEHOLD MANAGEMENT,
INC., RETAIL PLAZAS, INC., AND
RPI DENTON CENTER, LTD.**

Counter-Plaintiffs
















**CIVIL ACTION No.
3:16-cv-02255-L**

**DEFENDANTS AND COUNTER-PLAINTIFFS' AMENDED MOTION FOR
PARTIAL SUMMARY JUDGMENT ON STATE AUTO'S AFFIRMATIVE
DEFENSES**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants, Freehold Management, Inc. and Retail Plazas, Inc., and Counter-Plaintiffs, Freehold Management, Inc., Retail Plazas, Inc., and RPI Denton Center, LTD. (hereafter collectively “Freehold” or “the Freehold Entities”) file this amended motion for partial summary judgment on State Auto’s affirmative defenses. In support of this motion, the Freehold Entities would show this honorable Court the following:

As discussed in the brief in support of this motion, Plaintiff was unable to adduce any evidence on its affirmative defenses of (1) failure to mitigate; (2) that Freehold failed to use all reasonable means to save and preserve the Property; (3) that the damage occurred outside the policy period; or (4) that Freehold maintained the Property in a

faulty manner. As a result, Freehold is entitled to summary judgment on these matters.

WHEREFORE, PREMISES CONSIDERED, Defendants/Counter-Plaintiffs pray that this Court grant their amended motion for partial summary judgment; grant final judgment on these affirmative defenses to Defendants/Counter-Plaintiffs; and award Defendants/Counter-Plaintiffs such other relief as may be proper.

Respectfully submitted,

Loree & Lipscomb,
777 E. Sonterra Blvd., Suite 320
San Antonio, Texas 78258
Telephone: (210) 404-1320
Facsimile: (210) 404-1310

By: /s/ Todd Lipscomb
Robert W. Loree
State Bar No. 12579200
rob@lhllawfirm.com
Todd Lipscomb
State Bar No. 00789836
todd@lhllawfirm.com
Cassandra Pruski
State Bar No. 24983690
cassie@lhllawfirm.com

Attorneys for Freehold Entities

CERTIFICATE OF SERVICE

I certify that the Freehold Entities have served a true and correct copy of the foregoing document and attachments on August 30, 2018 through the Court's electronic filing (CM/ECF) system to the following counsel of record:

Charles B. Mitchell, Jr.
Michael Shane O'Dell
Naman, Howell, Smith & Lee, PLLC
405 Forth Worth Club Building
306 West 7th Street
Fort Worth, Texas 76102-4911

Christopher D. Kratovil
Alison R. Ashmore
DYKEMA COX SMITH
1717 Main Street, Suite 4200
Dallas, Texas 75201
Telephone: (214) 462-6400
Facsimile: (214) 462-6401

/s/ Todd Lipscomb
Todd Lipscomb